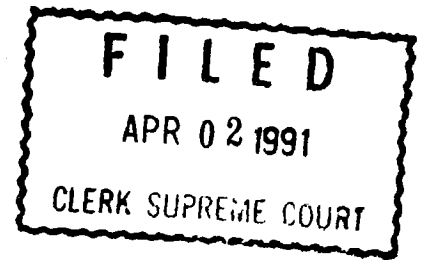


IN THE COURT OF APPEALS OF IOWA

No. 1-006 / 90-59



STATE OF IOWA,

Appellee,

vs.

KIRBY DIEDRICH JONES,

Appellant.

485

Appeal from the Iowa District Court for Polk County,
George D. Bergeson, Judge.

Defendant Jones appeals his conviction, following a jury trial, for possession of cocaine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Bruce Kempkes, Assistant Attorney General; James Smith, County Attorney; and Jamie Bowers, Assistant County Attorney, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

DONIELSON, P.J.

Police officers executed a search warrant at a house occupied by Kirby Jones, his girlfriend Mary Moore, and Moore's six children. In a padlocked closet, the officers found several plastic bags containing cocaine. Jones was charged with possession of cocaine with intent to deliver.

At his jury trial, Jones testified that the drugs were not his and that he had never touched them. He offered evidence to suggest the drugs belonged to Mary Moore's teen-aged son Tony, or to Tony's friend, Floyd Ezell.

In response to Jones's evidence, the State presented rebuttal testimony by a fingerprint expert, Frank Tarasi. Tarasi testified that Jones's fingerprints were found on two of the plastic bags containing cocaine. On surrebuttal, Jones responded (1) he often touched such plastic bags when he prepared lunches for the children, (2) such bags were kept in the padlocked closet because they were dangerous to the younger children, and (3) Moore's son, Tony, or his friend, Floyd Ezell, could have had access to used plastic bags previously touched by Jones.

The jury found Jones guilty of possession of cocaine with intent to deliver. Jones appeals the resulting conviction.

Jones contends the district court should have excluded the fingerprint expert's rebuttal testimony because the State failed to notify Jones of this evidence until after Jones had rested his case. He argues the delay violated

Iowa Code section 691.4, which requires the State to disclose a criminalistics lab report to a criminal defendant. Defendant recognizes that trial counsel did not adequately preserve this issue for review -- trial counsel did not object to the admissibility of this evidence based on section 691.4, nor did trial counsel move for a continuance (the remedy provided for in section 691.4). We have repeatedly held that matters not raised in the trial court cannot be effectively asserted for the first time on appeal. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974).

Defendant argues, however, that to the extent any portion of this issue may not have been preserved, the omission resulted from ineffective assistance of counsel and therefore should not be held against him. Additionally, Jones contends his trial attorney rendered ineffective assistance by failing to make discovery requests which might have revealed the fingerprint report and by failing to disclose whether the county attorney violated any kind of agreement by withholding the fingerprint report. The record before this court is inadequate to review this claim of ineffective assistance of counsel. Generally, we hold such claims are more properly raised through postconviction proceedings under Iowa Chapter 663A. See, e.g., State v. Powell, 400 N.W.2d 562, 565 (Iowa 1987); State v. Taylor, 310 N.W.2d 174, 179 (Iowa 1981); State v. Steltzer, 288 N.W.2d 557, 560 (Iowa 1980). We adhere to that rule here.

AFFIRMED.