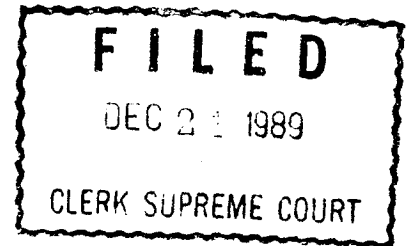


IN THE COURT OF APPEALS OF IOWA

No. 9-315 / 88-868



STATE OF IOWA,

Appellee,

vs.

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BERT HOWARD BOOTH,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Roger F. Peterson, Judge.

Defendant appeals his conviction after a jury trial for the crime of possession of a controlled substance (marijuana) with intent to deliver. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and James F. Whalen, Assistant Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Julie A. Halligan, Assistant Attorney General; and Joe Gunderson and Raymond Walton, Assistant County Attorneys, for plaintiff-appellee.

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

HABHAB, J.

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Defendant appeals from his conviction and sentence, following a jury trial, for possession of a controlled substance with intent to deliver. We affirm.

Defendant Bert Howard Booth was charged with possession of a controlled substance (marijuana) with intent to deliver, a violation of Iowa Code section 204.401(1)(b). At times material to this controversy, Booth and his family rented a house from Larry Althoff. In December 1987 Booth fell behind in rent and Althoff asked him to leave. Booth said they would be out of the house by January 2 or 3, 1988.

Althoff came to inspect the property on January 6, 1988. He found the door had been wedged shut with kitchen knives. Once Althoff got inside, the condition of the house was such that he believed it had been trashed. He found several small bags of marijuana. Althoff called the police and consented to a search.

A police officer found several more small bags of marijuana. Booth's fingerprints were on those bags. Booth returned to the house on January 9, 1988, and was subsequently arrested. At Booth's trial, Keith Smith testified that Booth had sold drugs to him in the past. A jury found Booth guilty of the crime charged.

Booth appeals his conviction and sentence. He claims that the search of his residence by the police violated his

fourth amendment rights. Booth feels that the court should not have admitted the fruits of this search into evidence.

Booth did not file a motion to suppress at trial, but argues this was due to ineffective assistance of counsel. He claims he has not waived this issue.

At trial the State argued that Booth had abandoned the premises, thus giving Althoff the right to consent to a search. But Booth argues he did not abandon the house. To support this argument, he points out (1) that he jammed the doors shut with knives, and (2) he had left clothing, furniture, and a microwave oven in the house. Booth concludes by asserting that merely because the house was very messy did not mean he did not still live there.

Booth on appeal contends that he did not receive effective assistance of counsel because his trial counsel did not object to inadmissible evidence. He states that his claim should be heard now because his counsel's actions were egregious. Booth believes his trial attorney was ineffective because: 1) he failed to move to suppress the results of the police search of Booth's residence on constitutional grounds; 2) he failed to object to evidence regarding the condition of Booth's residence, including prejudicial photographs; 3) he failed to object to a police officer's testimony that anyone who possesses more than one-half pound of marijuana is a dealer; 4) he failed to object to the officer's testimony regarding the personal

hygiene habits of drug dealers; and 5) he failed to object to evidence that Booth exercised his right to remain silent during questioning by police.

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 claims are generally reserved for postconviction hearings, but may be determined on 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 defendant's claim. 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 asserts was error. At a postconviction proceeding a full evidentiary hearing may be had, and defendant's trial counsel will be given the opportunity to explain his inactions.

AFFIRMED.