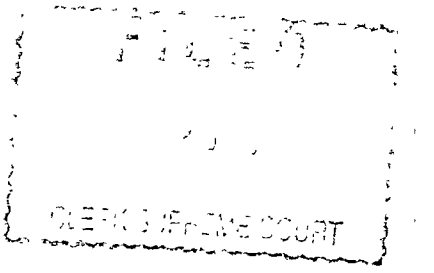
IN THE COURT OF APPEALS OF IOWA

No. 7-155 / 96-0809



000671

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WALTER JUNIOR HOSKINS, III,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

The defendant appeals his conviction for possession with intent to deliver a controlled substance (cocaine base), and being a second offender in violation of Iowa Code sections 124.401(1)(c) and 124.411 (1995), and also for failure to affix a drug stamp in violation of Iowa Code section 453B.12. **AFFIRMED.**

Kelly A. Phipps of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Cady and Streit, JJ., but decided en banc.

HUITINK, J.

Defendant Walter Junior Hoskins III appeals from his sentence for possession with intent to deliver a controlled substance and being a second offender in violation of Iowa Code sections 124.401(1)(c) and 124.411, and also his failure to affix a drug stamp in violation of Iowa Code section 453B.12. He asserts his counsel was ineffective for failing to file a motion to suppress evidence and also for failing to call witnesses at his sentencing.

The record describes the following events: On April 14, 1995, police officers observed Maurice Moore driving a 1979 Buick Electra in Waterloo. The officers knew Moore's license was suspended and they proceeded to follow the vehicle. Hoskins was a passenger in the vehicle. Eventually the car pulled into a driveway. After both men exited the vehicle, the officers approached and immediately arrested Moore.

An officer noticed Hoskins had something in his mouth. Hoskins refused to open his mouth when ordered to do so. The officer then observed Hoskins swallow the contents of his mouth before agreeing to open it. Hoskins was arrested and transported to Allen Memorial Hospital where doctors pumped his stomach. The contents of his stomach revealed sixteen individually wrapped pieces of crack cocaine. The officers recovered $340 in cash from Hoskins at the hospital.

Officers remaining at the scene performed a search incident to arrest. The inspection of the vehicle yielded a pager in a small plastic container on the floor between the front seats, a knotted portion of a plastic bag on the floor beneath the passenger seat, and also the corner of a plastic bag on the floor behind the passenger seat.

In December 1995, Hoskins entered a plea of guilty to possession with the intent to deliver a controlled substance, being a second offender, and failure to affix a drug stamp. In April 1996, Hoskins was sentenced to thirty years incarceration, a $1000 fine, and a five-year consecutive sentence on the drug stamp charge.

On appeal Hoskins asserts his trial counsel was ineffective for failing to make a motion to suppress the drug evidence. He submits the officers lacked probable cause to initiate the search and that because the contents of his stomach constitute the principle evidence of his guilt, he was prejudiced by its admission at trial. Hoskins also contends his counsel was ineffective for neglecting to present witnesses at his sentencing. He sought to present testimony that he had been helping out his family who was need of his continued assistance.

Ordinarily, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow counsel an opportunity to respond. *See State v. Taylor,* 310 N.W.2d 174, 179 (Iowa 1981). We agree with the State's argument that the record contains insufficient evidence to assess trial counsel's duty to file the

motion to suppress. Accordingly, we preserve this issue for postconviction resolution. We also preserve the issue raised by Hoskins concerning his counsel's decision not to call witnesses at his sentencing.

AFFIRMED.