

IN THE COURT OF APPEALS OF IOWA

No. 1-260 / 10-0852
Filed June 15, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYSON DAVIS KIDD,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Jane F. Spande,
District Associate Judge.

A defendant claims the district court abused its discretion in denying his
motion to suppress statements made to police officers; alternatively, he asserts
that counsel was ineffective for failing to timely raise that motion. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Harold Denton, County Attorney, and Laurie Craig, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

Tyson Kidd was arrested for driving while barred. At the time of his arrest, he was sitting in the front passenger seat, and no one was seated in the driver's seat. Kidd initially told officers that the driver ran away from the vehicle. He later admitted he was the driver.

After the State charged Kidd, he was sequentially represented by several attorneys, none of whom moved to suppress his admission to the police. Two months before trial, the court appointed an attorney who represented him through trial. On the first day of trial, this attorney sought to suppress Kidd's admission and simultaneously asked for a postponement of the trial date. The district court denied the suppression motion as untimely. The court reasoned that Kidd had fair notice the State intended to rely on his admission, as it was disclosed in the minutes of testimony, and the issue could have been raised earlier. The court declined to postpone the trial. A jury found Kidd guilty of driving while barred.

On appeal, Kidd contends the district court abused its discretion in denying his suppression motion. Alternately, he claims one or more of his pre-trial attorneys were ineffective in failing to file a timely motion to suppress.

I. Denial of Suppression Motion

Pretrial motions are to be filed no more than forty days after arraignment. Iowa R. Crim. P. 2.11(4). Kidd concedes the suppression motion was not filed within this time frame but contends the State did not resist the late-filed motion and good cause existed to excuse the untimely filing.

On the first point, the Iowa Supreme Court has "found a waiver [of a constitutional objection] even when the State did not resist the motion as

untimely and unexcused.” *State v. Ball*, 600 N.W.2d 602, 604 (Iowa 1999). For that reason, the State’s failure to object to the motion as untimely is immaterial.

On the second point, we discern no abuse of discretion in the district court’s refusal to find good cause for the late filing. See Iowa R. Crim. P. 2.11(3) (stating the court, “for good cause shown, may grant relief from such waiver [of an objection]”); *State v. Eldridge*, 590 N.W.2d 734, 736 (Iowa Ct. App. 1999) (“Absent a showing of good cause, an untimely motion to suppress constitutes waiver of the grounds forming the basis for the motion.”). The minutes of testimony unambiguously referred to Kidd’s admission that he was the driver of the vehicle. Accordingly, Kidd and the attorneys who represented him before the forty-day deadline expired had the information they needed to file a timely motion to suppress his admission. See *Ball*, 600 N.W.2d at 605 (noting that the court had previously “treated the defendant and defense counsel as one collective unit with respect to knowledge of factual information” and stating “we can safely infer that [the defendant] had the necessary factual information to make a timely pretrial motion to suppress”). Likewise, Kidd’s trial attorney, who filed his appearance forty-seven days before trial, had ample notice and opportunity to file a motion to suppress before the first day of trial. See *State v. Jordan*, 779 N.W.2d 751, 755 (Iowa 2010) (“[A] relevant factor to consider when evaluating the existence of good cause is the length of time an attorney has been involved in the case.”). Because the motion was filed on the first day of trial, the State was prejudiced. Cf. *Eldridge*, 590 N.W.2d at 737 (noting State not prejudiced given six-week postponement of trial after suppression motion filed). For these reasons, we affirm the district court’s denial of Kidd’s motion to suppress.

II. Ineffective Assistance of Counsel

Kidd claims his earlier attorneys were ineffective in failing to timely file a motion to suppress. “Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim.” *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). We preserve this claim for postconviction relief proceedings.

AFFIRMED.