

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1146 / 13-0042  
Filed January 9, 2014

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

**vs.**

**DOMINIC UNTREL WOMMACK,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,  
Judge.

Dominic Wommack appeals his convictions of possession with intent to deliver (marijuana) and interference with official acts, contending trial counsel was ineffective. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly G. Cunningham, Assistant County Attorney, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.  
Tabor, J., takes no part.

**DANILSON, C.J.**

The State charged Dominic Wommack with possession with intent to deliver a controlled substance, marijuana; a drug tax stamp violation; interference with official acts; and driving under suspension. Wommack appeals his convictions of possession with intent to deliver and interference with official acts, contending trial counsel was ineffective in failing to assert hearsay and Confrontation Clause objections to an officer's recitation of statements made by an out-of-court declarant. We affirm his convictions and preserve the ineffective-assistance-of-counsel claims for possible postconviction-relief proceedings.

*1.* After police officers checked the license plates of a blue Chevy Caprice traveling through an intersection and learned the registration on the car had expired, they followed the Caprice until the driver parked. As the driver exited the car, Officer Nick Shorten leaned out his window on the passenger side of the police vehicle and told the driver to stop. Officer Shorten then said, "Sir, you have an expired registration on your vehicle that you're driving." The driver responded, "So." Officer Shorten opened his car door and started to step out. The driver ran.

After an unsuccessful chase, the officers returned to the Caprice. The driver-side window was down, and the officers smelled marijuana. Officer Craig Burkle opened the car "looking for identification, who may have been the person that ran from us" and saw a brown leather backpack in the backseat. He opened the backpack, which contained a scale and two bags of marijuana. Scattered on the backseat were twenty-seven photos. On the floorboard was a booking form

from June 12, 2012, for Dominic Wommack. The officers requested a picture of Wommack from the jail, and when they received the picture, both officers identified Wommack as the driver of the Caprice. The officers then attempted to locate Wommack at addresses he had previously listed. At one of those addresses, a woman spoke to officers.

At the subsequent bench trial, without objection by defense counsel, Officer Burkle testified,

We told [the woman we spoke to] what had just happened. She stated that she did not know Dominick Wommack, but that he knows her son. So she refused consent for us to go in and look for him. While we were standing there talking to her, I showed her the pictures that we had of him and she said, yeah, he was here earlier today approximately three or four times. And then I described the car. The car was very—it stands out. It's a big Chevy Caprice with large rims on it, and she said that vehicle was there earlier on today's date as well.

She got on the phone, talked to her son and she asked—I heard her say to her son what was the name of that individual that was here earlier today that was wearing that brown backpack—I had never said anything to her about a brown backpack—and her son refused to answer her. And then she asked her son if his name was Dominic Wommack, he still refused to answer her. So then she gave me the phone to talk to him, and as I began to talk to him, he hung the phone up on me.

Two latent fingerprints found in the Caprice were Wommack's. No fingerprints were detected on the bags of marijuana. Wommack's defense was that he was not the driver of the Caprice and the drugs were not his. The district court found Wommack guilty of possession with intent to deliver and interference with official acts. Wommack appeals, contending trial counsel was ineffective in failing to object to the officer's recitation of the woman's statements.

// Because we determine the record is inadequate to determine Wommack's ineffectiveness claim, we preserve it for possible postconviction-relief proceedings. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) ("If the defendant requests that the court decide the claim on direct appeal, it is for the court to determine whether the record is adequate and, if so, to resolve the claim. If, however, the court determines the claim cannot be addressed on appeal, the court must preserve it for a postconviction-relief proceeding, regardless of the court's view of the potential viability of the claim."). We affirm the convictions.

**AFFIRMED.**