

IN THE COURT OF APPEALS OF IOWA

No. 3-793 / 12-1857
Filed September 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CALVIN ORLANDO HOSKINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Calvin Hoskins appeals his conviction for possession of marijuana, third offense, in violation of Iowa Code section 124.401(5) (2011), claiming trial counsel was ineffective for failing to file a motion in limine to exclude a statement he made to police officers. **AFFIRMED.**

Gregory F. Greiner of Greiner Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

VOGEL, P.J.

Calvin Hoskins was convicted by a jury of possession of marijuana, third offense, in violation of Iowa Code section 124.401(5) (2011). Hoskins was stopped on June 9, 2011, because his car did not have operable license plate lamps. Upon approaching the vehicle, officers noted the odor of marijuana. Hoskins exited his car, and the officers placed him in handcuffs, then used a flashlight to peer into Hoskins's mouth. They took a sample of the residue appearing on Hoskins's cheek and tongue, which was later tested and determined to be marijuana. Hoskins informed one of the officers he had swallowed a marijuana roach.

Before the start of trial, Hoskins demanded he see the video tape of his arrest, stating:

I mean, I've got a right to a fair trial. You know, I feel like that's the evidence. They say—I ain't even seen this tape. Everybody seen this tape except for me. I've got a right to see my tape for the motion to suppress, right? That's what I did, the motion to suppress, right? I didn't see this tape.

Over the noon break, both trial counsel and Hoskins viewed the video, after which trial counsel stated he "probably should have filed a formal written motion in limine" to exclude the statement Hoskins made to police about swallowing the marijuana roach. The court heard oral arguments on the issue and reserved its ruling until a foundation could be laid. Once the arresting officer testified, the court stated:

There was an objection made by counsel in a motion in limine, but we've resolved that in a sidebar conference. The State did not go into asking any questions about what statements might have been made and actually the State withdrew that. So I did rule eventually

on that objection by counsel but I wanted the record to be clear of that.

Neither the State nor trial counsel elicited testimony regarding Hoskins's statement that he swallowed a marijuana roach. Though the jury heard testimony regarding the substance found in Hoskins's mouth, the jury never heard Hoskins's statement.

Hoskins now asserts trial counsel was ineffective for failing to properly and timely object to this statement, given counsel did not file a motion to suppress. Hoskins argues trial counsel "knowingly played possum regarding his breach of duty." Hoskins further claims he was prejudiced by this breach of duty, because a pre-trial ruling could have changed his subsequent trial strategy.

We review ineffective assistance of counsel claims de novo. *State v. Tejeda*, 677 N.W.2d 744, 754 (Iowa 2004). While we generally reserve ineffective assistance claims for postconviction relief proceedings, if the record is adequate to address the claim, it may be resolved on direct appeal. *Id.* We find the record is adequate here.

To succeed on this ineffective assistance claim, Hoskins must show (1) trial counsel breached an essential duty, and (2) prejudice resulted. *Id.* Because both prongs must be established, if Hoskins cannot show he was prejudiced, we need not consider whether trial counsel failed to perform an essential duty. *Id.* We note that "prejudice must give rise to a reasonable probability the outcome of the proceeding would have been different had counsel not erred." *Id.* (internal citation omitted).

On this record, Hoskins cannot establish prejudice. Hoskins's admission to police that he had swallowed the marijuana roach was never before the jury. Simply asserting his trial strategy could have been different with a pre-trial ruling excluding his statement does not demonstrate how the outcome of the proceeding would have been different. *See id.* Finding no prejudice from counsel's actions, we affirm Hoskins's conviction.

AFFIRMED.