

IN THE COURT OF APPEALS OF IOWA

No. 7-609 / 06-1901
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KERRY DAVID INMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, William C. Ostlund,
Judge.

Kerry David Inman appeals his conviction for possession of marijuana with
intent to deliver. **AFFIRMED.**

Steven K. Nalean, Nalean & Nalean, Boone, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney
General, Jim Robbins, County Attorney, and Steven A. Owen, Special
Prosecutor, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Kerry David Inman appeals his conviction, following jury trial, for possession of marijuana with intent to deliver, in violation of Iowa Code section 124.401(1)(d) (2005). He claims he was denied effective assistance of counsel. We affirm his conviction and preserve his ineffective assistance claims for a possible postconviction proceeding.

Inman contends his trial counsel was ineffective for failing to object to several instances of alleged prosecutorial misconduct by the State during its closing argument. More specifically, he contends the prosecutor acted improperly in (1) referring to the existence of a local drug trade and making a public safety argument to the jury regarding it, (2) vouching for the veracity of the arresting officer, who was a State's witness, (3) expressing a personal belief regarding Inman's guilt, and (4) emphasizing and commenting regarding evidence that disappeared from the courtroom during a trial recess and inflaming the jury against Inman. Inman argues that but for trial counsel's failure to object to these instances of alleged prosecutorial misconduct the result of the proceeding would have been different.

We review claims of ineffective assistance of counsel de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005). To prove trial counsel was ineffective the defendant must show that counsel breached an essential duty and that prejudice resulted from counsel's error. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Griffin*, 691 N.W.2d 734, 736-37 (Iowa 2005).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (citing *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997)). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997). “[W]e preserve such claims for postconviction relief proceedings, where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims.” *Biddle*, 652 N.W.2d at 203.

We conclude the record before us is inadequate to address one or more of Inman’s claims of ineffective assistance on direct appeal. Under these circumstances, we pass on these issues of ineffective assistance in this direct appeal and preserve them for a possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986). Accordingly, we affirm the conviction and preserve Inman’s specified claims of ineffective assistance of counsel as set forth above for a possible postconviction proceeding.

AFFIRMED.