

**IN THE COURT OF APPEALS OF IOWA**

No. 7-365 / 06-1419  
Filed June 27, 2007

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

**vs.**

**JEFFREY ALAN SOBOROFF,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mary E. Howes,  
Judge.

Jeffrey Soboroff appeals his conviction, following jury trial, for operating  
while intoxicated. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, William E. Davis, County Attorney, and Liz Cervantes, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Jeffrey Soboroff appeals his conviction, following jury trial, for operating while intoxicated, in violation of Iowa Code section 321J.2(1) (2005). He claims he was denied the effective assistance of counsel. We affirm his conviction and preserve his ineffective assistance of counsel claims for a possible postconviction proceeding.

Soboroff contends his trial counsel was ineffective for failing to timely file a motion to suppress and to secure a ruling on the untimely motion to suppress that he did file. He claims he was prejudiced by the admission of the evidence which should have been suppressed had counsel properly performed his essential duties. 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.

The State urges the record is not adequate to deal with Soboroff's claims of ineffective assistance on direct appeal and suggests they should be preserved for a possible postconviction proceeding. We agree. No record has yet been made before the trial court on these issues, trial counsel has not been given an

opportunity to explain his actions, and the trial court has not ruled on these claims. Under these circumstances, we pass these issues 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 Soboroff's conviction and preserve the specified claims of ineffective assistance of trial counsel for a possible postconviction relief proceeding.

**AFFIRMED.**