FILED
MAR 20 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 20, 1984
vs.	)	
WILLIAM L. KRAMER,	)	4-57
Defendant-Appellant.	)	83-696

Appeal from the Iowa District Court for Dubuque County - T. H. Nelson, Judge.

The defendant appeals from his conviction for burglary in the first degree. AFFIRMED.

Raymond E. Rogers, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

Defendant, William Kramer, appeals from his conviction for burglary in the first degree in violation of Iowa Code sections 713.1 and 713.2.

While the defendant was being booked on the burglary charge, a police officer asked him about the disposition of a charge in another state. The defendant replied that he had been innocent of that charge. The police officer then said sarcastically: "Yes, I know, Bill, you're always innocent." The defendant allegedly responded: "Not this time."

The case was tried to the court and the police officer was permitted to testify about this conversation at trial over the defendant's objection that no Miranda warning had been given.

On appeal, the defendant's sole argument is that his trial attorney rendered ineffective assistance by failing to file a pre-trial motion to suppress the police officer's testimony sketched above. The defendant acknowledges that his attorney made an unsuccessful objection to the testimony at trial; however, he argues that a pretrial motion to suppress was necessary in order to fully raise the issue. He also argues that since the police officer's proposed testimony was reported in the minutes of testimony, trial counsel could not claim to have been unaware before trial that such testimony would be offered.

The defendant contends that his complaint of ineffective assistance can be resolved on direct appeal because no further record is necessary to establish ineffectiveness. The state appears to agree that no further record is necessary, although the state contends that trial counsel did not render ineffective assistance. The state argues that a motion to suppress could not have prevailed because the police officer's offhand comment did not amount to interrogation and consequently Miranda warnings were unnecessary. The state also argues that even if a motion to suppress might have prevailed, its absence did not prejudice the defendant because there was ample evidence to support a conviction even without the police officer's testimony. We agree.

Where, as here, a criminal defendant relies upon a specific act or omission to prove ineffective assistance of counsel, two conditions must be demonstrated. It must be shown that (1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom. Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). The Iowa Supreme Court has recently held that in order to prevail on an ineffective assistance claim the defendant must show that such ineffectiveness resulted in actual and substantial disadvantage to the course of his defense. State v. Miles, ____ N.W.2d ____ (1984) (filed February 15, 1984).

Even assuming, arguendo, that Kramer's trial counsel in fact failed to perform an essential duty, Kramer cannot prevail on the claim. Kramer has failed to show that the alleged ineffectiveness of counsel resulted in actual and substantial disadvantage to the course of his defense. Kramer clearly has not demonstrated the requisite prejudice and is therefore not entitled to relief. Because Kramer failed to demonstrate prejudice as set forth in State v. Miles, we need not decide whether his trial counsel failed to perform an essential duty.

AFFIRMED.