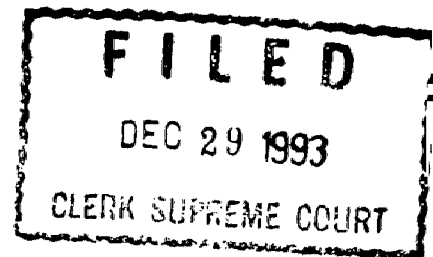


IN THE COURT OF APPEALS OF IOWA

No. 3-504 / 92-1332



STATE OF IOWA,

Appellee,

vs.

WARREN JOSEPH MEYER,
BRYAN KEITH REINHART and
JOHN WILLIAM REINHART,

Appellants.

Appeal from the Iowa District Court for Buena Vista
County, James L. McDonald and Joseph J. Straub, Judges.

Three codefendants challenge their burglary-related
convictions. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and
Patricia Reynolds Lapointe, Assistant State Appellate
Defender, for appellants.

Bonnie J. Campbell, Attorney General, Bridget Chambers,
Assistant Attorney General, and Corwin Ritchie, County
Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

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HAYDEN, J.

Three codefendants appeal their convictions for burglary. On appeal they challenge the sufficiency of the evidence with regard to the convictions for first-degree burglary and contend the State's failure to disclose exculpatory evidence constituted prosecutorial misconduct and violated their due process rights.

This case arises out of two burglaries at the farm home of Daniel Lussman. The first burglary occurred on the night of Thursday, March 19, or the early morning of Friday, March 20, 1992. The second burglary occurred on the night of Saturday, March 21, and into the early morning of March 22, 1992.

After the first burglary, Deputy Sheriff Douglas Simons received a tip from Randy Krohn there had been a burglary at the Lussman farm. Deputy Simons also learned a truck owned by defendant Warren Joseph Meyer was used in the burglary. The informant told Simons the burglars might return to the Lussman farm.

An investigation of the Lussman farm revealed evidence someone had broken into the residence. Daniel Lussman, who was living away from the farm at the time, told investigating officers he had left his farm home secured. The officers subsequently began a surveillance of the homes of Lussman and of Warren Meyer.

On the night of March 21, 1992, the police observed Warren Meyer, Bryan Keith Reinhart, and John William

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Reinhart drive from Meyer's home to the Lussman farm in Meyer's truck. When the truck left the Lussman farm the police stopped it. The bed of the truck was full of property. Lussman later identified the property as belonging to him.

At the time of the stop, John Reinhart was wearing an empty shoulder harness for a gun. The police discovered a semiautomatic pistol underneath the front seat of the truck, just to the left of center. Meyer had been driving the pickup, and Bryan and John were passengers.

The State charged all three defendants with two counts of burglary in the first degree. Prior to trial, John Reinhart filed a motion for discovery asking the State reveal any exculpatory evidence. The trial court sustained the motion. The matter proceeded to a jury trial.

The jury found Meyer and Bryan Reinhart guilty of second-degree burglary in relation to the first burglary and first-degree burglary in relation to the second burglary. The jury found John Reinhart guilty of first-degree burglary for each burglary.

The court sentenced Meyer and Bryan Reinhart to up to ten years for the second-degree burglary convictions and up to twenty-five years for the first-degree burglary convictions. The court ordered the sentences to run concurrently. The court sentenced John Reinhart to up to twenty-five years for both first-degree burglary convictions. The court ordered the sentences to run

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concurrently. The court also ordered John to receive a five-year mandatory minimum sentence. The jury returned a special interrogatory finding John was armed with a dangerous weapon during the second burglary. Defendants appeal. We affirm.

I. Exculpatory Evidence.

A. In a motion for discovery of evidentiary material, defendant John Reinhart sought "an Order compelling the State of Iowa to make known the names and addresses of all persons known to the State whose testimony is or may be exculpatory to the Defendant" The court sustained this portion of the motion. The other two defendants did not join in this motion. At trial defendant sought to have the charges against him dismissed based on prosecutorial misconduct. Reinhart claimed the State failed to comply with the discovery order by not providing the last name of an informant. The trial court overruled the motion, finding the evidence was "anything but exculpatory." On appeal, Reinhart argues his due process rights were violated by the State's failure to disclose the informant's last name.

Reinhart's allegation of misconduct arises out of the State's alleged suppression of the last name of an informant who had told police about the burglaries. For most of the trial witnesses for the State referred to an individual known as Randy. Agent Sauer testified John Reinhart had told him in an interview he and his brother,

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Bryan, rode from Early to Meyer's residence in Newell on the night of the second burglary in Randy's 1967 Lincoln Continental. In a report apparently prepared by Deputy Simons dated March 24, 1992, there is a reference to an individual named Randy. The report states "John and Bryan and a Randy (last name unknown) arrived at Warren's trailer around 10:30 P.M. [on March 21, 1992]." Earlier in this same report there is a statement which indicates the manner in which the police were informed of the initial burglary: "[t]hrough a citizens call a description of a light blue older Chevy pickup with front end damages was known to have pulled out of the Daniel Lussman farm in the early morning hours of 3-20-92." Defendant Meyer also mentioned an individual he knew as Randy. The informant was eventually, during the trial, identified as Randy Krohn.

To prevail on a claim defendant has been denied a fair trial by prosecutorial misconduct, defendant must show there was misconduct and he was prejudiced by such misconduct. State v. Whitsel, 339 N.W.2d 149, 155 (Iowa 1983) (citation omitted). Defendant cites the State's alleged failure to disclose this exculpatory evidence as misconduct. Exculpatory is defined as "[c]learing or tending to clear from alleged fault or guilt; excusing." Black's Law Dictionary 675 (4th ed. 1968). In the case at bar the evidence cannot be interpreted as exculpatory. Randy Krohn was the individual who initially told police about the burglaries. Deputy Simons testified Randy had

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stated Meyer had told him the three defendants had ripped off items from a farm place and might return to retrieve other property at a later date.

We determine there was no misconduct because the allegedly withheld information is not exculpatory. Therefore defendant's claim of misconduct has no merit.

B. Defendants Meyer and Bryan Reinhart admit claims of prosecutorial misconduct and a due process violation was not preserved with regard to their appeals. They claim their trial counsels rendered ineffective assistance by failing to file a motion for discovery and to object to the State's suppression of the informant's identity.

The record on appeal is adequate for this court to address the ineffectiveness claim on direct appeal. A defendant raising a claim of ineffective assistance must show (1) his counsel failed to perform an essential duty and (2) the failure prejudiced defendant. Brewer v. State, 444 N.W.2d 77, 83 (Iowa 1989). We determine defendants have failed to satisfy the prejudice component of an ineffectiveness claim. A failure to file a motion similar to defendant Reinhart's motion for discovery and make the objection to the State's failure to disclose allegedly exculpatory evidence would not have altered the outcome of the case. As we have explained in the previous section of this opinion, an allegation of misconduct based on the alleged failure to disclose an informant's last name has no merit because the evidence is not exculpatory. In fact, it

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is inculpatory to these defendants. Defendants have not shown there is a reasonable probability the outcome would have been different if the State had stated the informant's last name any earlier in the trial. We conclude trial counsels did not render ineffective assistance for failing to file a motion for discovery and failing to object to the State's alleged failure to disclose purported exculpatory evidence.

II. Sufficiency of the Evidence.

Defendants contend there was insufficient evidence to support their convictions for first-degree burglary. All three defendants claim evidence raised only a suspicion they were armed with a dangerous weapon during the second burglary. John Reinhart also claims there was insufficient evidence to prove he was in possession of a dangerous weapon during the first burglary.

Our scope of review is an assigned error only. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987) (citing Iowa R. App. P. 4). In a challenge to the sufficiency of the evidence we will uphold a verdict where there is substantial evidence in the record tending to support the charge. Id. (citation omitted). We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. Id. (citations omitted).

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A. First Burglary. At the time officers stopped Meyer's truck on March 22, 1992, John Reinhart was wearing a shoulder harness for a gun under his coat. A nine-millimeter handgun was later found in the truck under the front edge of the seat. In an interview John Reinhart told Agent Sauer he had worn his shoulder harness with his gun in it during the first burglary. Deputy McClue, who observed and recorded by way of written notes, the interview between Sauer and Reinhart. The deputy stated when Reinhart was asked if the other guys [Bryan and Warren] knew he had the gun with him during the first burglary, he answered in the affirmative. Meyer also gave a statement to the police after his arrest. Meyer stated he was sure Reinhart had a gun during the first burglary. Meyer admitted he had handled John's gun earlier in the evening of the first burglary. He also stated Meyer always carried a gun with him except when at work. During trial, Meyer testified John Reinhart carried a gun with him at all times, except when he was at work. Meyer testified he assumed John had his gun with him at time of the first burglary.

B. Second Burglary. In an interview with Agent Sauer John Reinhart stated he had placed his gun under the seat of the pickup during the second burglary. Reinhart stated Warren and Bryan knew the gun was under the seat. In an interview Meyer had told officers he believed John had the gun with him during the second burglary. At trial Meyer

claimed he did not know how the gun got under the front seat of the truck during the second burglary.

There was substantial evidence from which a rational fact-finder could conclude John Reinhart was in possession of a dangerous weapon during the commission of the first burglary, and all three defendants were in possession of a dangerous weapon during the commission of the second burglary. We affirm the convictions of Warren Meyer, Bryan Reinhart, and John Reinhart.

AFFIRMED.