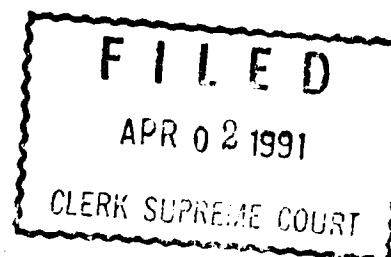


IN THE COURT OF APPEALS OF IOWA

No. 1-55 / 90-424



STATE OF IOWA,

Appellee,

432

vs.

MELVIN EDWARD BURGESS,

Appellant.

Appeal from the Iowa District Court for Polk County,
Richard A. Strickler, Judge.

The defendant appeals his convictions, following a jury trial, for possession of methamphetamine with intent to deliver and unauthorized possession of offensive weapons.
AFFIRMED.

Linda Del Gallo, State Appellate Defender, for
appellant.

Bonnie J. Campbell, Attorney General, Sarah J. Coats,
Assistant Attorney General, James Smith, County Attorney,
and Jamie Bowers, Assistant County Attorney, for appellee.

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

PER CURIAM

Police officers searched the home of Melvin Burgess. The police officers entered the home by breaking down the door. There is a dispute concerning whether the officers announced their presence before doing so. During the search the officers found drugs and weapons. Burgess was later charged with possession of amphetamines with intent to deliver and unauthorized possession of offensive weapons. A jury found Burgess guilty of those charges, and he has appealed the resulting convictions.

Burgess contends the fruits of the search of his home should have been excluded because the police officers failed to knock and announce their presence before breaking down the door. He acknowledges his trial attorney failed to raise this issue in any way. However, he argues this omission should not be held against him because it resulted from ineffective assistance of counsel.

Burgess also contends the district court should have excluded from evidence several other items found in his house during the search. He argues these items were irrelevant to the charges against him. These items included a substance believed to be marijuana, a police scanner, two pagers, and several guns other than the gun which gave rise to the offensive weapon charge. We affirm.

Burgess first contends his trial counsel was ineffective in failing to raise the issue of whether the police properly informed him of their presence at his

home. We note, however, the record is relatively silent as to the reasons why trial counsel decided not to raise the issue following the trial court's denial of a pretrial suppression motion. The record reveals counsel thought the issue had already been raised at trial. At the sentencing hearing defense counsel stated he did not raise the issue before trial because he was under the impression the police had announced their entry into the house. Counsel also stated he subsequently learned the police had not announced their presence, but had simply barged in using a battering ram. Burgess maintains counsel could have discovered the nature of the police entry simply by asking him.

There is not sufficient evidence in the record to adjudicate a claim of ineffective assistance of counsel. We have generally recognized postconviction proceedings pursuant to Iowa Code chapter 663A to be the best forum for the resolution of ineffective assistance claims. State v. Johnson, 445 N.W.2d 337, 339 (Iowa 1989). This is so because in postconviction proceedings a full evidentiary hearing may be held to allow defense counsel the opportunity to explain his conduct or otherwise state on the record his reasons for actions which were taken at trial. Id. We decline to consider Burgess's ineffective assistance of counsel claim in this direct appeal. Defendant may, however, raise such issues by application for postconviction relief in a later proceeding.

Burgess next contends the trial court abused its discretion in overruling his relevancy objections to various items of evidence removed from his home. Among the items seized from the Burgess home were plastic bags of a green-like substance believed to be marijuana, pagers, a police scanner, and numerous weapons, including shotguns, revolvers, and rifles. Defense counsel objected to the admission into evidence of these items, arguing they were irrelevant to the charge of possession with intent to deliver. Defense counsel also requested and obtained a standing objection to the admission of the weapons found in the home.

Determinations of relevance of evidence rests within the sound discretion of the trial court and will be reversed only upon a showing that such discretion has been abused. State v. Gordon, 354 N.W.2d 783, 784 (Iowa 1984) (citations omitted). Pursuant to Iowa Rule of Evidence 401, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Irrelevant evidence is not admissible. Iowa R. Evid. 402.

We hold the evidence was clearly relevant to the charges alleged against Burgess. Testimony from the police detectives offered at trial revealed the items taken at the Burgess home are becoming very prevalent among drug dealers. Detective Thielman testified drug dealers often

use scanners to monitor police activities in hopes of getting advanced warning on drug raids. Thielman also testified drug dealers often keep offensive weapons around the house and on their person. Thielman also stated pagers are frequently being used by drug dealers to provide the dealers with a more efficient means of communication. Such items were therefore useful to demonstrate a pattern of dealing in drugs with intent to deliver.

We also hold the trial court did not abuse its discretion in admitting the leafy green substance found in Burgess's home. The State may introduce all of the drug-related paraphernalia and substances found in the home at the time of the search to show a continuous series of occurrences to complete the story of the crime, even though other offenses may come to light in the process. State v. Walters, 426 N.W.2d 136, 141 (Iowa 1988). Such evidence was admissible to show motive, intent, plan, or preparation. Iowa R. Evid. 404(b). We find no abuse of discretion here.

AFFIRMED.