FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed January 30, 1981

vs.)

MAURICE REDD,) 0-386
63847

Defendant-Appellant.)

Appeal from Polk District Court - Maynard Hayden, Judge.

Defendant appeals conviction for delivery of a controlled substance for profit in violation of section 204.401(1), Supplement to the Code 1977. AFFIRMED.

Linda Del Gallo of Parrish & Del Gallo, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals his conviction for delivery of a controlled substance for profit in violation of section 204.401(1), Supplement to the Code 1977. He claims that he was denied effective assistance of counsel and that the trial court erred in admitting certain tape recordings into evidence. We affirm.

I. Defendant first claims that he was denied effective assistance of counsel because his trial counsel did not attempt to discover the identity of the state's confidential informant. "The test is whether under all the circumstances counsel's performance was within the range of normal competency." Hinkel v. State, 290 N.W.2d 28, 30 (Iowa 1980). Defendant has the burden to prove his claim of ineffective assistance of counsel by a preponderance of the evidence. Id. On the record presently before us, we are unable to conclude that defendant has sustained his burden of proof. The record is silent as to whether trial counsel chose not to attempt to identify the informant for tactical reasons or whether he was negligent in failing to do so. Our rejection of defendant's argument, however, is not meant to preclude his right to raise this issue in a proper application for postconviction relief.

II. Defendant objected to the introduction of two tape recordings of telephone conversations between defendant and the informant which led to the sale of the controlled substances at issue here. The objections were based on the grounds that the tapes were irrelevant and that any probative value was outweighed by their prejudicial effect. We disagree.

Regarding relevancy, the test is "whether the evidence offered would render the desired inference more probable than it would be without such evidence." State v. Ball, 262 N.W.2d 278, 279 (Iowa 1978). In this case, the recorded conversations went to the heart of the elements of the charged offense—delivery of a controlled substance for profit. The recordings were certainly relevant. Nor can we accept defendant's claim that the recordings were highly prejudicial. He asserts that the tapes "unduly arouse[d] the jury's emotions of prejudice and hostility." There is nothing in the record to support this assertion.

Defendant also claims that the tapes were "merely repetitious" of testimony given by one of the state's witnesses. This fact, if true, does not serve as a reason for excluding the tape recorded evidence of defendant's admissions. We have considered all issues presented and find no basis for reversal.

AFFIRMED.