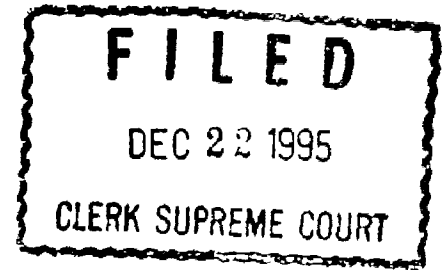


IN THE COURT OF APPEALS OF IOWA

No. 5-472 / 94-1218



STATE OF IOWA,

Appellee,

vs.

CORINTHIAN PRENTISS,

Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia L. Lewis,
Judge.

Corinthian Prentiss appeals his conviction, following a jury trial, for possession of marijuana in violation of Iowa Code sections 124.401(3) and 124.204(4)(m) (1993). **AFFIRMED.**

Kathy Goudy of The Law Offices of Kathy Goudy, Des Moines, for appellant.

Thomas J. Miller, Attorney General; Susan M. Crawford, Assistant Attorney General; J. Patrick White, County Attorney, and Linda Paulson, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., Cady, J., and McCartney, S.J.*

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The defendant, Corinthian Prentiss, appeals the judgment and sentence imposed upon him after his conviction of violation of sections 124.401 and 124.204 of the Code of Iowa, i.e. possession of marijuana.

The appellant raises several issues on appeal. First, he asserts that the trial court erred in admitting physical evidence, marijuana, into evidence because of his assertion that the chain of custody was improper and that the marijuana had been altered. He further asserts that he was denied a fair trial because the identity of a confidential informant was not disclosed.

We affirm.

Counsel for the defendant did not object to the admission of the marijuana cigarettes into evidence nor was any question raised about the chain of custody.

The defendant was, at the time of the offense, a prisoner at the Oakdale facility and after receiving an informant's tip, correctional officers searched both the defendant and his locker, finding such contraband in both places.

Although the appellant now questions the chain of custody of this evidence when removed from his person and his locker and although he now contends that the evidence had been tampered with, no such objections were lodged at trial when this physical evidence was offered into evidence.

Objections to the foundation laid for the entry of physical evidence must be made in order that the court may be alerted to the alleged defect. This was not done. *State v. Lundsford*, 204 N.W.2d 613 (Iowa 1973). We find that the trial court did not abuse its discretion in admitting the marijuana into evidence.

The appellant further now argues that the identity of the confidential informant should have been disclosed. Again, this was not pursued at trial. The State, by motion in limine, asked the trial court to prohibit the defendant from pursuing this matter of the identity of the confidential informant. At the hearing on the motion, the State stated that the only thing to be elicited from the confidential informant was that the appellant possessed marijuana. Counsel for the defendant then agreed with this limitation and so the matter ended.

Again, the trial court was advised that the matter was resolved and no further inquiry was made at trial along these lines. Under these circumstances, we do not believe the trial court erred.

The defendant asks that should this matter be affirmed, that he be permitted to preserve his right to assert ineffective assistance of counsel in a postconviction relief hearing.

The claim of ineffective assistance of counsel pertains to both issues, the chain of custody and the disclosure of the confidential informant.

With regard to the former, we hold that there was sufficient evidence buttressing the chain of custody and a reasonable explanation of any purported tampering of the evidence. While we are mindful of the rule that the State has the burden in this matter of showing that it is probable that tampering or substitution did not occur, we believe the record shows no such tampering. *State v. Mayner*, 480 N.W.2d 872 (Iowa 1992). The court, however, may also rely at the same time on the *Mayner* holding that state agents would presumably not substitute or tamper with exhibits. Here, the officers testified as to their continued possession of the marijuana from its seizure to its analysis and its return to the officers. One objection by the defendant is that whereas three marijuana cigarettes were taken from him, the exhibit consisted of four such cigarettes. An officer testified that the one cigarette had been broken. The officers handling the contraband all clearly identified the exhibit as the material seized from the defendant.

The position of the appellant throughout was that the marijuana had been planted on him and in his locker.

In order to sustain the ineffective assistance of counsel challenge, the defendant has to prove by a preponderance of the evidence that his counsel failed to perform an essential duty and that it resulted in prejudice. *State v. Risdal*, 404 N.W.2d 130 (Iowa 1987). There is a presumption that the conduct of counsel was reasonable under the circumstances and was within the normal range of competency.

Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). We believe counsel's conduct here fell within a reasonable range of competence. Defendant asserted that the marijuana was planted on him and in his locker. Consequently it logical for counsel to pursue this defense.

The testimony at trial reflected a chain of custody and an acceptable explanation of the broken cigarette. Pursuing this line of inquiry would have been fruitless and would tend to focus attention away from the "planted evidence" defense.

In *Thompson v. State*, 492 N.W.2d 410 (Iowa 1992), the supreme court held that calculated tactics or mistakes in judgment are not necessarily ineffective assistance of counsel. The supreme court has further held that in judging counsel's actions, we should not second-guess counsel in counsel's efforts to pursue "what are frequently equally hazardous options available to him."

We do not believe the defendant has sustained the preponderance of evidence in this matter.

The defendant further asserts that the identity of the informant should have been disclosed. The failure of his counsel to demand such disclosure or to pursue the matter with the trial court was ineffective according to the defendant. The defendant's counsel at trial simply wanted to exclude the "underlying substance" of the information received from the confidential informant, and the State agreed to only submit the information at trial that informant had advised that the defendant had

marijuana on his person and in possibly in his locker. Counsel for the defendant acceded to this.

Again, the defendant carries the burden of showing the necessity of such disclosure. We have previously held that interests of the State in prison security oftentimes outweighs the need for disclosure of a confidential informant inside prison walls. *Gladson v. State*, 439 N.W.2d 214 (Iowa App. 1989). Although the defendant speculates that the informant might have planted the marijuana, this theory of planted evidence was rejected by the jury.

Under these circumstances, we do not believe that the defendant has satisfied either prong of the two-prong approach above described.

Based upon the foregoing, we affirm the conviction, judgment, and sentence imposed upon the defendant, and we further refuse to preserve his claim for postconviction relief.

AFFIRMED.

Cady, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I agree with the majority that defendant's conviction should be affirmed. I disagree with the majority's decision that defendant's claim of ineffective assistance of trial counsel should not be preserved.