

**IN THE COURT OF APPEALS OF IOWA**

No. 1-749 / 10-1952  
Filed November 9, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TRACEY RICHTER ROBERTS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clay County, Patrick M. Carr,  
Judge.

Tracey Richter Roberts appeals from her conviction for perjury.

**AFFIRMED.**

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for  
appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney  
General, Michael J. Houchins, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**POTTERFIELD, J.**

Tracey Richter Roberts appeals from her conviction for perjury under Iowa Code section 327.217 (2007). We affirm the conviction because (1) substantial evidence exists from which a jury could find Roberts knew her statement of name change was false; (2) defendant has failed to prove trial counsel was ineffective; (3) the court did not err in not submitting the law as jury interrogatories; and (4) the motion for new trial was not timely filed.

**I. Background Facts and Proceedings.**

A rational jury could have found the following facts:

Tracey Richter Roberts applied for a duplicate driver's license and name change on February 19, 2008, claiming she had lost her old license and also that she wished to change her name on the driver's license. Roberts filled out an Iowa Department of Transportation form stating as follows:

I hereby state that my name has been, and I have been known as: Tracey Ann Richter and I hereby state that I have legally changed my name to: Sophie Corrina Terese Baronin von Richterhausen Edwards and I will hereby use this new name exclusively. I further state that such name change is not made for fraudulent purposes.

At the bottom of the affidavit and just above Roberts's signature appears the following: "I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the proceeding is true and correct."

As documentation for the name change, Roberts presented a file-stamped divorce decree signed by a judge ordering that "Tracey Richter Roberts . . . may

resume use of her maiden name Sophie Corrina Terese Baronin von Richterhausen Edwards.”<sup>1</sup>

A later investigation showed that Roberts’s divorce decree did not contain the order for a name change quoted above. During a search of Roberts’s Omaha, Nebraska apartment, police found a document purporting to be a dissolution decree with the added language and the judge’s signature taped to the bottom of an altered page. The search also yielded the earlier issued driver’s license Roberts claimed to have lost.

Roberts was tried and convicted of perjury pursuant to Iowa Code section 327.217, and she now appeals.

## **II. Discussion.**

“A person who applies for a new driver’s license . . . or a duplicate license or card to replace one that is lost or destroyed shall submit proof of age, identity and social security number.” Iowa Admin. Code r. 761-601.5. Subsection three of that rule is applicable to name changes and reads:

The name listed on the license or nonoperator’s identification card that is issued shall be identical to the name contained on the primary document submitted unless the applicant submits an affidavit of name change on Form 430043.<sup>[2]</sup> The affidavit must be accompanied by one of the following documents:

- a. Court-ordered name change. It must contain the full name, date of birth, and court seal.
- b. Divorce decree.
- c. Marriage license or certificate.

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<sup>1</sup> In 2005, Roberts had signed a DOT application for name change from Tracey Richter Roberts to Tracey Anne Richter, referencing a court order from the same court file.

<sup>2</sup> There is no explanation for the difference in Form number used in the regulation and used in this case—Form 430052, which contains both an Affidavit and Agreement For Issuance of Duplicate License/ID and Affidavit of Name Change Application.

This rule is intended to implement Iowa Code sections 321.182 and 321.189.

It is a serious misdemeanor to “[u]se a false or fictitious name in any application for a driver’s license or nonoperator’s identification card or to knowingly make a false statement or knowingly conceal a material fact or otherwise commit fraud on an application.” Iowa Code § 321.216A(4). “Any person who makes any false affidavit, or knowingly swears or affirms<sup>[3]</sup> falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury, a class ‘D’ felony.” *Id.* § 321.217.

A duplicate license<sup>4</sup> may be obtained “upon payment of a fee of three dollars for a driver’s license” and “furnishing proof satisfactory to the department that the driver’s license . . . has been lost or destroyed.” Iowa Code § 321.195; see *also* Iowa Admin. Code r. 761-605.11(1) (“To replace a valid license that is lost or destroyed, the licensee shall submit Form 430052 and proof of age, identity and social security number. The replacement fee is \$3.”).

Section 321.182, provides in part:

Every applicant for a driver’s license shall do all of the following:

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<sup>3</sup> Iowa Code section 622.1 provides:

1. When the laws of this state or any lawful requirement made under them requires or permits a matter to be supported by a sworn statement written by the person attesting the matter, the person may attest the matter by an unsworn written statement if that statement recites that the person certifies the matter to be true under penalty of perjury under the laws of this state, states the date of the statement’s execution and is subscribed by that person. . . .

2. The certification described in subsection 1 may be in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

<sup>4</sup> The department of motor vehicles “shall not issue a driver’s license . . . [t]o any person holding any other driver’s license.” Iowa Code § 321.177(2).

1. a. Make application on a form provided by the department which shall include the applicant's full name, signature, current mailing address, current residential address, date of birth, social security number, and physical description including sex, height, and eye color. The application may contain other information the department may require by rule.

....  
2. Surrender all other driver's licenses and nonoperator's identification cards.

3. Certify that the applicant has no other driver's license and certify that the applicant is a resident of this state as provided in section 321.1A.

See also Iowa Admin. Code r. 761-601.1.<sup>5</sup>

A. *Sufficiency of the evidence.* Roberts first contends there was insufficient evidence that she knew her statement "I have legally changed my name to Sophie Corrina Terese Baronin von Richterhausen Edwards" was false.

We review challenges to the sufficiency of evidence presented at trial for correction of errors at law. In doing so, we examine whether, taken in the light most favorable to the State, the finding of guilt is supported by substantial evidence in the record. We find evidence substantial if it would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. We draw

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<sup>5</sup> Rule 761-601.1 provides:

(1) *General.* In addition to the information required under Iowa Code sections 321.182 and 321.196, the information in this rule is required from an applicant for a driver's license. Additional requirements for a commercial driver's license are found in 761—Chapter 607.

(2) *Name.* The applicant's full name shall be given on the application. Civilian and military titles and nicknames shall not be used.

....

(7) *Signature.*

a. The applicant's signature shall be without qualification and shall contain only the applicant's usual signature without any other titles, characters or symbols.

b. The applicant's signature certifies that the statements on the application are true and the fee collected was correct.

c. The applicant's signature acknowledges that the applicant is aware of the requirement to notify the department of a change in mailing address within 30 days of the change.

d. A driver's license clerk or examiner will initial the application as witness.

This rule is intended to implement Iowa Code sections 321.182, 321.196 and 321C.1, Article V.

all fair and reasonable inferences that may be deduced from the evidence in the record. In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct.

*State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

The jury could have found Roberts signed an affidavit “under penalty of perjury” stating “I have legally changed my name to Sophie Corrina Terese Baronin von Richterhausen Edwards” and submitted an altered dissolution decree as documentation. Police found in Roberts’s apartment an altered dissolution decree. Also found in her apartment was the driver’s license Roberts claimed to have lost. The jury was free to infer from this evidence that Roberts knew her statement made under penalty of perjury was false. The evidence presented was sufficient from which a rational juror could infer and conclude beyond a reasonable doubt that Roberts knew the statement was false. *Cf. State v. Carter*, 618 N.W.2d 374, 377–78 (Iowa 2000) (finding certification on application with Board of Pharmacy Examiners that information provided “is true and correct” did not constitute an oath or affirmation as it was not made “under penalty of perjury”).

*B. Counsel was not ineffective.* Roberts next asserts trial counsel was ineffective in entering into a stipulation. Two elements must be established to show the ineffectiveness of defense counsel: (1) counsel failed to perform an essential duty; and (2) this omission resulted in prejudice. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003). A defendant’s inability to prove either element is fatal. *Id.*

Roberts claims trial counsel was ineffective in stipulating that certain documents were found in her apartment and thus waiving objections as to foundation. The record, however, contradicts the premises of the claim. While trial counsel did stipulate that certain items “were found in defendant’s apartment in Omaha, Nebraska,” the stipulation specifies that defendant “reserves the right to object to its relevance, and admissibility.” Roberts’s trial counsel did in fact object to the admissibility of the dissolution decree with the substituted final page that had the judge’s signature taped to it on grounds of relevance, and argued the witness could not testify “where it came from” or “if it’s a true and accurate copy of the original.” Roberts does not claim on appeal that the documents were not found in her apartment. Nor does she claim the evidence had been tampered with, substituted, or altered. See *State v. Biddle*, 652 N.W.2d 191, 196–97 (Iowa 2002) (noting foundation required to admit physical evidence the State must show only “circumstances making it reasonably probable that tampering, substitution or alteration of evidence did not occur”). The defendant has failed to show counsel breached an essential duty and thus her claim of ineffective assistance of counsel fails.

*C. Jury instruction was not improper.* Roberts also argues the district court erred in not submitting Instruction No. 16 as a “series of interrogatories for the jury to answer.” Instruction No. 16 was comprised of statements of Iowa law: Paragraph A contains Iowa Administrative Code rule 761-601.5(3); Paragraph B, Iowa Code section 321.9; Paragraph C, Iowa Code section 622.1. None of the statements of law were subject to fact finding by the jury.

*D. Motion for new trial was not timely.* Roberts moved for a new trial claiming the verdict was against the weight of the evidence and that there had been jury misconduct. She argues the trial court abused its discretion in overruling her motion for a new trial. The motion was properly denied as untimely having been filed more than forty-five days after the guilty verdict. See Iowa R. Crim. P. 2.24(2)(a), 2.24(3)(b).

**AFFIRMED.**