FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA	)	Filed August 27, 1986
Plaintiff-Appellee,	)	327
vs.	)	6-179 84-97
REGINALD LEON COOK,	)	
Defendant-Appellant.	)	
	)	

Appeal from the Iowa District Court for Pottawattamie County (No. 19171) - Glen M. McGee, Judge.

Defendant appeals his conviction of robbery in the first degree.

AFFIRMED.

Reginald Leon Cook, pro se, for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; David E. Richter, Pottawattamie County Attorney; and Joseph Reedy, Assistant County Attorney, for appellee.

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

HAYDEN, J. 328

This is a pro se appeal by defendant, following a jury trial, judgment and sentence on the charge of robbery in the first degree, in violation of Iowa code sections 711.1 and 711.2 (1983). Defendant was sentenced to serve a term of incarceration not to exceed twenty-five years. Throughout the trial court proceedings the defendant was represented by counsel.

Essentially, defendant alleges 1) the trial court abused its discretion in overruling his motion for new trial; 2) the lineup procedure was overly suggestive and was conducted in violation of his right to counsel, and; 3) there was not sufficient evidence to support his conviction. We affirm.

I

The factual basis for the defendant's motion for new trial as presented to the trial court at the sentencing proceeding, concerned the testimony of Kimberly Modlin. The record reveals that Ms. Modlin was only 80% sure of her initial identifications of the defendant; that on the day of trial the assistant county attorney revealed that the police had, at some point in time, told Ms. Modlin that the defendant had been convicted of at least one other robbery of a similar nature; and at trial she was positive in her identification of the defendant. Counsel for the defendant argued to the trial court that these facts established that undue influence was exerted on the witness, prejudicing her testimony and thereby denying the defendant a fair trial.

"Trial courts, which are closer to the actual trial than the appellate courts are, have discretion in granting or denying new trials based on fair trial considerations." State v. LaDouceur, 366 N.W.2d 174, 178 (Iowa 1985). The trial court ruled in this case that the matters raised by the defendant's motion for

new trial were "not sufficient to set aside the jury verdict or to grant a motion for new trial." Two other witnesses identified the defendant from photographs and in-court identification. We find the trial court's ruling was not an abuse of its discretion. Moreover defendant has waived his right to raise this issue on appeal in that he failed to object at trial to Modlin's in-court identification of the defendant. This is true even though the issue was presented in the defendant's motion for new trial, since "the grounds of a motion for new trial must stand or fall on exceptions taken at trial . . . " State v. Droste, 232 N.W.2d 483, 487-88 (Iowa 1975); see State v. Newman, 326 N.W.2d 788, 793 (Iowa 1982) (challenge to pre-trial lineup procedure raised for the first time in motion for new trial, the supreme court considered the issue waived).

II

The defendant alleges that the lineup was overly suggestive, that police officers coached the witnesses, and that the procedure constituted a denial of his right to counsel because he had no attorney present. No objection was made to these procedures by the defendant at the trial court level.

The facts in the record do not support the defendant's allegations that the identification procedure was impermissibly suggestive. We cannot determine from the record whether the lineup occurred before or after the initial appearance at which counsel was appointed for the defendant. The facts in the record do not support defendant's claim that police officers coached the witnesses. Defendant has failed to properly preserve these complaints for appeal. Id. Procedural requirements for preservation of error apply to pro se defendants. See State v. Walker, 236 NW 2d 292, 295 (Iowa 1975).

III

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In deciding defendant's claim that the record does not contain sufficient evidence from which a rational factfinder could find him guilty beyond a reasonable doubt we must examine all of the evidence in record. We view this evidence in the light most favorable to the State, without regard to contradiction or inconsistencies and assisted by all reasonable inferences. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980); see State v. Neal, 353 N.W.2d 83, 89 (Iowa 1984). We must determine whether there is substantial evidence in the record to support the defendant's conviction.

> A jury verdict is binding upon this court unless the record lacks substantial evidence to support the charge. Substantial evidence means evidence which could convince a rational trier of fact that the (defendant is) guilty of the crime charged beyond a reasonable doubt.

State v. Blair, 347 N.W.2d 417, 419 (Iowa 1984).

In the present case, as in Robinson, the defendant's contentions are based primarily upon the character of the evidence presented by the State. The defendant argues that the witnesses' identifications of him were unreliable and tainted by improper procedure. As noted in division II there are no facts on the record to support the defendant's claims that the identification procedures were suggestive. We must examine the evidence on record, and should not take into consideration the defendant's unsupported allegations of misconduct.

At trial, the State presented testimony from three eyewitnesses to the robbery. Each of these witnesses identified the defendant as the gunman who robbed the First Federal Savings and Loan on May 18th, 1983.

Patricia Olderog and Kimberly Modlin each observed the gunman from close range during the course of the robbery. Olderog was facing him from across the counter; Modlin was also facing the gunman from a distance of six or seven feet.

Each of these witnesses testified that they had the opportunity to get a good look at the gunman. Both Olderog and Modlin made positive identification of the defendant at trial. Olive Keast was seated about six to seven feet from the teller station when the robbery occurred. She realized that a robbery was taking place and observed the robber as he left the savings and loan. Keast, while she was not 100% certain, was comfortable with her identification of the defendant as the gunman.

The defendant presented one witness, his sister, who testified regarding his appearance at the time of the robbery. While this witness stated that the defendant's hairstyle and facial hair was different from that described by the State's witnesses, this evidence was not conclusive.

> The jury is at liberty to believe or disbelieve the testimony of witnesses as it chooses, and give such weight to the evidence as in its judgment the evidence was entitled to receive. The very function of the jury is to sort out the evidence presented and place credibility where it belongs.

State v. Blair, 347 N.W.2d at 420.

The evidence presented at trial was sufficient to support the jury's verdict.

AFFIRMED.