

IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed September

vs.)

CARLOS BELL,)

Defendant-Appellant.)

3-211
68612

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Appeal from Polk District Court - Joel D. Novak, Judge.

Defendant appeals his conviction of first degree robbery under Iowa Code sections 711.1 and 711.2 (1981). AFFIRMED.

Francis C. Hoyt, Jr., Appellate Defender, for defendant-appellant.

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

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals his conviction of first degree robbery under Iowa Code sections 711.1 and 711.2 (1981). He asserts that there was insufficient evidence to support his conviction and that he was denied effective assistance of counsel. We affirm.

On December 26, 1981, a black male passenger pulled a knife on cab driver Mark Shepherd and attempted to rob him. A brief scuffle ensued and the passenger ran from the cab. Shortly thereafter the police apprehended the defendant and Shepherd identified him as the assailant. At trial Shepherd testified that he got a good look at the assailant and described his features and clothes on the night of the crime. He then identified defendant as the robber. Although Shepherd testified that the assailant was wearing brown pants at the time of the robbery, the parties stipulated that defendant was wearing red pants at the time he was arrested. Shepherd also testified that there were no *distinguishing facial features on his attacker whereas defendant was missing two lower front teeth and had scars on both cheeks*. Defense counsel did not call any witnesses to corroborate defendant's testimony concerning his presence in the vicinity of the crime. The parties stipulated to the testimony of two police technicians that latent fingerprints lifted from the cab immediately after the robbery did not match the defendant's fingerprints.

When issues of violation of constitutional rights are presented, we make an independent evaluation of the totality of the circumstances. This is equivalent to a *de novo* review. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

I.

Sufficiency of the Evidence. A jury verdict will be upheld on appeal unless there is no substantial evidence in the record to support it. Substantial evidence is evidence which could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. We view the

evidence in the light most favorable to the State and accept all legitimate inferences that can rationally be drawn therefrom. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

In this case there was a positive eyewitness identification of defendant as the assailant. While the witness's description was not perfect, any discrepancy is a matter for the jury to assess when weighing the witness's credibility. State v. Agee, 257 Iowa 1345, 1348, 136 N.W.2d 419, 420 (Iowa 1965). We cannot say that the jury acted irrationally in believing Shepherd's testimony, despite the discrepancies. The officer who arrested defendant also testified that he perceived defendant's pants to be dark in color. Furthermore, when asked in court about defendant's scars, Shepherd did not notice them at that time either. The supreme court has noted: "It is a fact of human experience that a person may be recognized and identified by his composite appearance when the observer does not remember details of the appearance." State v. Agee, 257 Iowa at 1348, 136 N.W.2d at 420.

The eyewitness identification constituted substantial evidence to support the jury verdict and convict the defendant of robbery.

II.

Ineffective Assistance of Trial Counsel. Criminal defendants are entitled to a lawyer whose performance is within the range of normal competency. Karasek v. State, 310 N.W.2d 190, 191 (Iowa 1981). Counsel is not ineffective just because a reasonable tactical decision does not have the desired result. Fryer v. State, 325 N.W.2d 400, 413 (Iowa 1982). The burden is on the defendant to establish that counsel was ineffective and that defendant was substantially prejudiced as a result. Lopez v. State, 318 N.W.2d 807, 810 (Iowa Ct. App. 1982).

Defendant questions his trial counsel's decision to stipulate to certain evidence rather than to present it to the jury in a more forceful manner. Specifically, defendant claims that his attorney should have called the police

technicians to testify that the fingerprints found on the cab were not defendant's. However, this evidence is inconclusive. One witness's statement indicates that due to the nature of fingerprints and the type of surface from which these were taken, these fingerprints were not necessarily those of the robber; they could have been left by anyone who touched the cab several weeks prior to the robbery. We cannot say that counsel erred in stipulating to this testimony.

Likewise, we cannot say counsel was wrong in stipulating to the fact that defendant was wearing red pants at the time of his arrest. Defendant testified to this fact and the stipulation corroborated his testimony. Surely this was sufficient emphasis of the point. The discrepancy in the color of pants, while noteworthy, was less significant due to the arresting officer's testimony that he also perceived the pants to be of a dark color.

Finally, defendant asserts counsel should have called witnesses to corroborate his testimony regarding his presence in the vicinity of the crime. It is incumbent upon defendant to show that the testimony of these witnesses would have been beneficial to his case. Nichol v. State, 309 N.W.2d 468, 470 (Iowa 1981). There is no indication in the record of exactly what the testimony would have been. Counsel, after considering the strength of the testimony or the credibility of the witnesses, may have concluded that these witnesses would not help defendant's case.

Having considered all of the issues raised by defendant, we find no error.

AFFIRMED.