

IN THE COURT OF APPEALS OF IOWA

No. 7-067 / 96-0081

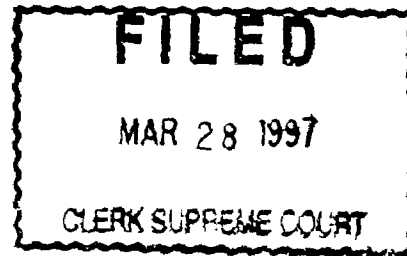
STATE OF IOWA,

Appellee,

vs.

SHANNON D. YOUNG,

Appellant.



Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Shannon Young appeals from his convictions of second-degree robbery and assault causing injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sharon R. Stevens and John M. Priester, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

PER CURIAM

Shannon Young appeals from judgment and sentences entered upon his convictions of second-degree robbery and assault causing injury in violation of Iowa Code sections 708.2(2) and 711.3 (1995). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On June 15, 1995, Calvin Kimberlin was working alone in a 7-Eleven store. Shortly before midnight, a young black male entered the store with a bandana over his face. The man pointed a gun at Kimberlin and demanded the money from the cash register and Kimberlin's wallet. The gun discharged and a bullet ricocheted off the counter and hit Kimberlin in the stomach. Kimberlin called police to report the robbery as soon as the man left.

At 11:56 p.m., patrolling officers Bender and Doescher were in the area of the 7-Eleven when they observed a black man exit the store. The man was wearing a dark tank-top style shirt, shorts, and a light hat. He had some facial hair. Bender saw the man start to run. Seconds later they heard the broadcast that the 7-Eleven had been robbed. They turned their patrol car around, Bender radioed a description of the man they had just seen leaving the 7-Eleven, and the officers arrived back at the store within moments. After checking on Kimberlin, Doescher took the patrol car in search of the man. Within fifteen minutes Shannon Young was stopped by another officer about one-half mile from the 7-Eleven because he matched the robber's description.

Young told officers he had just been kicked out of his girlfriend's car. He was sweating.

Kimberlin was taken to Young for possible identification. Kimberlin stated he believed Young was the person who robbed him. Bender and Doescher both identified Young as the man they saw leaving the 7-Eleven. Young was charged with first-degree robbery and attempted murder.

At Young's jury trial, Kimberlin again stated he believed Young was the person who had robbed him. Kimberlin stated no other person came into or left the 7-Eleven after the robbery and before police responded to his telephone call. Bender and Doescher again identified Young as the man they saw leaving the 7-Eleven about the time of the robbery. On cross-examination and without objection, the State questioned Young about responses made on his application for appointment of counsel. Young admitted he had made false statements on the application. On re-direct, Young's attorney examined him about various correct statements he had made and moved to introduce the application into evidence. The jury found Young guilty of the lesser-included charges of second-degree robbery and assault causing bodily injury. Young appeals.

Young argues he received ineffective assistance of counsel due to counsel's failure to object to the use of his application for appointment of counsel. *See State v. Woodyard*, 414 N.W.2d 654, 659 (Iowa App. 1987) (evidence of defendant's

indigence prejudices jury against defendant because public funds are used for defense); *State v. Roghair*, 353 N.W.2d 433, 435 (Iowa App. 1984) (same).

Ordinarily, issues not presented in the trial court may not be raised for the first time on appeal. *Conner v. State*, 362 N.W.2d 449, 457 (Iowa 1985). An exception exists when failure to preserve error results from a due process denial of effective representation. *State v. Schoelerman*, 315 N.W.2d 67, 73 (Iowa 1982). In claims of ineffective assistance of counsel, the burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Risdal*, 404 N.W.2d 130, 131-32 (Iowa 1987). We review de novo the totality of the circumstances relating to counsel's conduct, keeping in mind the presumption that counsel performed competently. *Id.* at 131. We will find the requisite prejudice if the defendant establishes a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984).

We conclude Young's ineffective-assistance-of-counsel claim must fail because he cannot establish sufficient prejudice. Young maintains that because the case against him was weak, counsel's failure to object to the use of his application for appointment of counsel affected the trial's outcome. Contrary to Young's

characterization, the evidence against him was not weak. Kimberlin identified Young as the person who robbed the 7-Eleven. Bender and Doescher identified Young as the person they saw leaving the store and then within seconds hearing a broadcast of the robbery. Kimberlin testified no other person came into or left the store around the time of the robbery and before police arrived in response to his telephone call. Young was located within a short distance of the 7-Eleven and was wearing clothing similar to the descriptions given by Kimberlin, Bender, and Doescher. Young was not wearing a hat, but his hair maintained an outline of a hat. We reject Young's ineffectiveness claim and affirm his convictions.

AFFIRMED.