IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
RANDALL K. BELL,	)	9-68 88-508
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (36473), Theodore Miller, Judge.

Defendant appeals from his conviction and sentence for the crime of robbery in the first degree. **AFFIRMED.**

William L. Wegman, State Public Defender, and Linda Del Gallo, Assistant State Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Steven Foritano, Assistant County Attorney, for plaintiff-appellee.

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

OXBERGER, C.J.

Defendant, Randall K. Bell, appeals from his conviction by a jury of first degree robbery. He contends on appeal that (1) the trial court erred by admitting into evidence the weapons removed from the defendant and Floyd Conner at the time of their arrest, and (2) he was denied the effective assistance of counsel. We affirm.

At approximately 11:00 p.m. on August 30, 1987, armed men robbed Chi Chi's Restaurant in West Des Moines, Iowa. On September 1, 1987, the police responded to a citizen's complaint of a threat by Randall Bell. The officers spotted two men in a dark car in the neighborhood, had cause to believe one of them was Bell, and that both were armed. The officers drew their guns, approached the car, and ordered the suspects out. The policemen frisked the men, finding loaded handguns on both of them. Bell and Conner were arrested as felons in possession of firearms. The police took photographs of the suspects during the booking procedures. Later, the witnesses to the Chi Chi robbery were called down to the station to view photo arrays containing the pictures of Bell and Conner. The witnesses picked out Bell and Conner as the men who robbed Chi Chi's.

At Bell's trial the handguns taken from Bell and Conner at their arrest were admitted into evidence over the objections of the defense counsel. Bell first contends the

trial court erred in admitting the guns into evidence because the weapons were irrelevant to the Chi Chi robbery.

> An instrumentality in a defendant's possession or available to him, even when not identified as having actually been used in the crime charged, may be received in order to complete the picture of circumstances surrounding the event.

State v. Nowlin, 244 N.W.2d 596, 602 (Iowa 1976) (quoting State v. Schultz, 231 N.W.2d 585, 588 (Iowa 1975)).

While it had been proven at trial that other, larger firearms were used in the perpetration of the armed robbery of the restaurant, we find the handguns at issue were physical evidence seized incident to the lawful arrest of Bell and Conner. Providing a juror with a purified shell of a story forces him to connect the dots to see an event. Circumstances surrounding the arrest of a defendant are part of the whole story. There is no need to limit the image portrayed to the jury to a sketch when a portrait is available.

Secondly, the defendant contends he was denied effective assistance of counsel because the defense failed to call additional witnesses to support his alibi.

The court follows the United States Supreme Court guidelines in assessing effective assistance of counsel claims:

> Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy."

Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674, 694-95 (1984) (citation omitted).

Three witnesses testified at trial they were with Bell in Tom Owen's apartment at the time of the robbery. Defendant asserts counsel should have called Bell's wife, Nancy, to testify Bell was with her in their own apartment the night of the robbery.

Defense counsel's strategy in limiting the presentation of evidence to consistent witnesses is reasonable. The testimony of Nancy Bell may have been counterproductive to establishing an alibi since this evidence would put Bell in two different places at the same time. Furthermore, Bell himself testified, at the hearing on the motion for a new trial, that "I am a little leery of her [Nancy] because she is on drugs."

Bell also argues he was deprived of the opportunity to have another witness testify she saw him in Owen's apartment at the time of the robbery. Bell admits neither he nor his counsel was aware of this witness's identity at the time of trial. Furthermore, counsel was unaware of her existence until the hearing on the motion for a new trial.

Defense counsel's strategy withstands Strickland analysis. He presented the most credible alibi witnesses of whom he had knowledge. The fact that a trial strategy did not work casts no aspersion on the adequacy of

counsel. See Fryer v. State, 325 N.W.2d 400, 413-15 (Iowa 1982).

The defendant has not proven by a preponderance of the evidence that he was prejudiced by his counsel's omission of an essential duty. See Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981).

We affirm the conviction.

AFFIRMED.