IN THE COURT OF APPEALS OF IOWA

No. 0-386 / 99-0803
Filed September 27, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER MICHAEL SANKS,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer Judge.

Defendant appeals the judgment and sentence entered following his convictions of first-degree robbery and assault with intent to inflict serious injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

VOGEL, P.J.

Christopher Sanks appeals the judgment and sentence entered following his conviction of first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (1997) and assault with intent to inflict serious injury in violation of Iowa Code sections 708.1 and 708.2 (1997). We find: 1) the record contains substantial evidence to sustain the verdict; 2) Sanks failed to present his ineffective assistance of counsel claim sufficiently to allow for our review; and 3) the sentencing order did not require the court to specify the amount of credit for time served. We affirm.

Background facts. The convictions arose from an incident that occurred on December 17, 1998. Sanks and two friends, Freddie Haynes and Thomas Newman, entered Schlotzky's Deli on Ingersoll Avenue. The three men were the only customers in the restaurant during the incident. After ordering their food, at least two of the men went behind the counter with a gun drawn and aimed at the two employees present. Sanks ordered the employees to the floor and money was taken from the cash register. One of them asked the assistant manager, Kimberly Morris, to open the safe. When she informed them only a manager, absent at that time, had access to the safe, one of the men smashed Morris's face into the floor. Two shots were fired before the men left the business. Morris was struck in the leg by a bullet. A cellular phone belonging to Sanks was left behind the counter at the scene of the crime.

Scope of review. Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. *State v.*

LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions, which may fairly and reasonably be deduced from the record. *State v. Blair*, 347 N.W.2d 416, 418-19 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Laffey*, 600 N.W.2d 57, 59 (Iowa 1999).

Substantial evidence. Sanks asserts the State did not present sufficient evidence to allow the court to find him guilty beyond a reasonable doubt of first-degree robbery and assault with intent to inflict serious injury.

Two store employees, Morris and Thomas Moen, witnessed the incident. Both had face-to-face contact with all three of the men as they placed their food orders. Further, they were the only customers in the store during that time. Morris and Moen observed them moving suspiciously around the dining area as if checking it out, and heard one of them ask immediately prior to the robbery, "What do you think?" Both Morris and Moen gave an account of the incident, a description of the defendants and positively identified Sanks as the gunman. In addition, Sanks' cellular phone was dropped at the scene of the crime and left behind. The phone was connected to Sanks by his own admission, a fingerprint match and a witness. The State also presented the testimony of two witnesses who stated Sanks later confessed he was involved in the incident and he had shot his gun prior to leaving the deli.

Sanks presented a defense theory that his companions committed the act without his knowledge or involvement. He admitted to being at the deli but claimed he went out to his vehicle to locate his cellular phone when Hayes and Newman pulled a gun and committed the robbery. He further alleges they left his phone behind to implicate him in the act. The employees testified the gunman wore a tan trench coat. Sanks presented evidence that he always wore a black leather jacket and that Haynes or Newman was wearing a tan jacket during the incident, indicating the identification must have been faulty. He also testified that he had recently received a $5,000 legal settlement and, therefore, had no motive to participate in a robbery as he did not need the money.

Sanks claims the evidence presented in his defense rendered the State's evidence insufficient to allow the court to find him guilty on the counts charged. Looking at the evidence in the light most favorable to the State, however, we find sufficient evidence to sustain the convictions. The court found the testimony of the two employees credible and believed their identification of Sanks was correct. Both employees were able to provide a detailed physical description of the participants, identify all three defendants as the men involved, and describe their actions prior to and during the robbery, as they had ample time to interact with the men before the incident occurred. Further, the State presented the testimony of Sanks' ex-girlfriend. She stated the cellular phone used by Sanks was serviced in her name and that he called her on the night in question and asked her to report the phone stolen. The trial court's ruling indicates it accepted the victims' version of the incident over Sanks'. We find there was sufficient

evidence for the trial court to find Sanks guilty of both charges beyond a reasonable doubt.

Ineffective assistance of counsel. Sanks next alleges his trial counsel was ineffective for failing to object to the hearsay testimony presented by Officer Moran during the trial and four exhibits presented by the State. Our review of an allegation of ineffective assistance of counsel is de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App. 1994). A defendant has the burden of proving by a preponderance of the evidence his attorney did not perform an essential duty and, as a result, he was prejudiced. *State v. Howell*, 557 N.W.2d 908, 913 (Iowa App. 1996). To demonstrate prejudice, a defendant must prove there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *State v. Atwood*, 602 N.W.2d 775, 784 (Iowa 1999). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *State v. Carrillo*, 597 N.W.2d 497, 500 (Iowa 1999).

Sanks failed to specify which statements he alleges were hearsay and how he was prejudiced by his attorney's failure to object at trial to either the testimony or exhibits in question. He merely stated such evidence was incriminatory to him. A party is required to present to the appellate court the precise matter of which he complains. *See Cook v. State*, 431 N.W.2d 800, 804 (Iowa 1988). Further, Sanks claimed the testimony was incriminatory without a showing of how he was prejudiced by it or the existence of a reasonable probability that but for the presentation of the hearsay evidence and trial exhibits,

the trial outcome would have been different. *Atwood*, 602 N.W.2d at 784. Therefore, we find this issue was not presented sufficiently for our review.

Sentencing order. Finally, Sanks contends the trial court erred by failing to specify the credit for his time in custody within the sentencing order. The sentencing order merely stated, "Defendant is to receive credit for time already served." Sanks claims the precise time spent in custody is unclear from the record and may work to deprive him of jail time credit he is entitled to. The supreme court has recently ruled on this issue and found the trial court need not specify the amount of credit for time served a defendant is due within the sentencing order. *State v. Hawk*, __ N.W.2d __, __ (Iowa 2000). "That duty falls on the sheriff and clerk of court, whose calculations are incorporated into an inmate's sentence in accordance with section 901.6." *State v. Kepple*, __ N.W.2d __, __ (Iowa 2000). Therefore, we find the trial court did not err in the sentencing order. Accordingly, we affirm.

AFFIRMED.