IN THE COURT OF APPEALS OF IOWA

No. 5-711 / 94-2099

STATE OF IOWA,

Plaintiff-Appellee,

vs.

GRADY D. DANIELS,

Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge, and August F. Honsell, Judge.

Defendant appeals from judgment and sentence, following jury trial, entered upon his conviction of first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (1993). **AFFIRMED.**

Barbara J. Diment of Diment Law Office, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Denver D. Dillard, County Attorney, and Harold Denton, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

SACKETT, J.

Defendant-appellant Grady D. Daniels appeals from judgment and sentence, following jury trial, entered upon his conviction of first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (1993). He contends the district court erred in denying his motion to suppress, alleging the police officer lacked reasonable grounds to stop the vehicle in which he was a passenger. Defendant also contends he was denied his right to confront the witnesses against him when the district court did not allow him to fully question witness Bachemin about his plea agreement with the State. Finally, defendant contends there is insufficient evidence of identity or of the existence of a gun to support the conviction. We affirm.

The events leading to the charge against defendant began after midnight on February 9, 1994, when the Budget Inn Motel in Cedar Rapids was robbed. The desk clerk identified the robbers as three African-American males wearing bandannas over their faces. The clerk was not able to give much more of a description. She told police officers the robbers might be driving a dark-colored car similar to a Chevrolet Impala. It had snowed recently and three sets of footprints were found in the snow outside the motel. One print appeared to come from a tennis shoe, one from a work boot, and one from a cowboy-type boot.

About one and one-half hours after the robbery, Cedar Rapids police officer Atchison observed a yellow Plymouth Horizon, later identified as belonging to Chesly Ward, within eight to ten blocks of the Budget Inn. Inside the vehicle were one female

and four male African-Americans. Officer Atchison had heard a report of the robbery at the Budget Inn and had seen no other African-Americans in the area. He followed the Horizon and saw it turn quickly into a driveway. The occupants got out and then back in the vehicle. The Horizon then pulled out of the driveway and pulled up alongside the patrol car. The woman, Chesly Ward, was driving. She asked the officer for directions to a place in Marion, Iowa. Officer Atchison said the four men in the car did not look at him. The Horizon drove away and Officer Atchison followed. The Horizon pulled into a Hy-Vee parking lot.

Atchison radioed for more information on the robbery. He was told about the possible footwear the perpetrators may have been wearing. He drove by the parked Horizon and saw a person standing outside, next to the Horizon, wearing hiking or work boots.

Officer Atchison approached the Horizon and asked the woman driving, Ward, for identification which she supplied. He asked the passengers if he could see the soles of their shoes and was given permission to do so. He observed three of the four men in the car had tread designs on their shoes similar to the description of the footprints left at the Budget Inn. Dominic Bachemin, Greg Holliday, and defendant were then taken into custody. A subsequent search of the Horizon revealed the Budget Inn's cash box. No gun was found.

Bachemin, Holliday, and defendant were charged with first-degree robbery. Their motion to suppress the items seized during the search of the Horizon was

overruled. Defendant's first contention is the trial court erred in denying his motion to suppress the Budget Inn cash box seized from the car of Chesly Ward. Defendant further contends the officer did not have reasonable cause to stop the Horizon in which he was a passenger and the district court should have suppressed the cash box seized when the car was searched.

The State argues the officer's approach was not a seizure and did not implicate the Fourth Amendment. The State further argues the following evidence justifies the stop: (1) three black men participated in the robbery; (2) there were at least three black men in a car about ten blocks from the robbery; (3) the policeman had not seen any other black men in the area; (4) the turn in the driveway was unusual; (5) the men did not make eye contact with the officer when the driver asked directions; and (6) the police officer saw that one of the men wore boots.

Defendant further contends the search of the Horizon belonging to the driver, Ward, was unconstitutional and the cash box found should have been suppressed.

The State admits defendant has standing to challenge the stop of the Horizon but contends he has no standing to challenge the search in that he claimed neither ownership of the vehicle nor the box seized. We agree with the State, because defendant was merely a passenger in the car, he has not shown a legitimate expectation of privacy in the areas searched. *State v. Halliburton*, 539 N.W.2d 339, 342-43 (Iowa 1995); *see also State v. Hungerford*, 311 N.W.2d 699, 700 (Iowa App. 1981). Having so decided, we find it unnecessary to address defendant's other

challenges on this issue. We affirm the trial court's denial of defendant's motion to dismiss.

Defendant next contends the district court erred in prohibiting him from cross-examining an accomplice regarding unrelated charges against him. Bachemin, the accomplice, pleaded guilty to conspiracy and agreed to testify for the State. At trial, defendant was not allowed to question Bachemin about pending robbery charges unrelated to the Budget Inn robbery. Defendant contends this was error. He contends Bachemin received a deal based on this case and the other charges and he should have been able to show this to the jury. A defendant is permitted wide latitude in seeking to show an alleged accomplice who testifies for the State is biased. *See State v. Armento*, 256 N.W.2d 228, 229 (Iowa 1977). This is particularly important to a defendant seeking to show how the alleged accomplice's testimony is influenced by a promise or expectation of immunity or leniency granted him or her for testifying. *See id. See also State v. Sackett*, 499 N.W.2d 312, 314 (Iowa App. 1993), as supporting defendant's claim he should have had an opportunity to show the interest of the witness and the motivation for the testimony.

We agree with defendant he should have been permitted to question Bachemin about pending criminal charges against him to determine whether there may have been concessions on charges stemming from the robbery or additional concessions made on other charges to assure Bachemin's cooperation and testimony.

The State advances defendant was given sufficient opportunity for cross-examination and the record was sufficient to apprise the jury of Bachemin's bias. We agree there was adequate cross-examination to reveal Bachemin's bias. The jury learned Bachemin participated in the robbery and the first-degree robbery charge against him was reduced to one count of conspiracy and the State recommended Bachemin receive a suspended sentence in exchange for his testimony. *See Sackett*, 499 N.W.2d at 314-15.

Defendant's last contention is there was no evidence he used a gun. Defendant's motions for directed verdict and for new trial based on the sufficiency of the evidence were overruled.

Defendant was convicted of first-degree robbery and sentenced to a term not to exceed twenty-five years. A five-year mandatory minimum for use of a firearm was imposed. Defendant contends there was not substantial evidence to support a finding he used or displayed a gun. The victim testified a gun was put in her face by one of the robbers. A videotape showed one of the robbers had a gun. In *State v. Sanders*, 280 N.W.2d 375, 377 (Iowa 1979), the court said not only the offender who holds the gun but also his or her aiders and abettors can be subject to the mandatory punishment for use of a firearm. A second issue concerning use of a firearm addressed at oral argument was not contained in appellant's brief for this court and is not considered. We affirm.

AFFIRMED.