IN THE COURT OF APPEALS OF IOWA

No. 6-015 / 95-100

STATE OF IOWA,

Plaintiff-Appellee,

vs.

GREG L. HOLLIDAY,

Defendant-Appellant.

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

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.**

Janet K. Hong, Cedar Rapids, 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.

Considered by Sackett, P.J., Cady, J., and Peterson, S.J.*

* Senior judge from the First Judicial District serving on this court by order of the Iowa Supreme Court.

SACKETT, P.J.

Defendant-appellant Greg L. Holliday 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). Defendant contends his trial counsel was ineffective in failing to challenge an impermissibly suggestive show-up. He next 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 not sufficient evidence of identity 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.

The clerk from the Budget Inn was brought to the Hy-Vee parking lot. Defendant, Daniels, and Bachemin were individually placed in the stream of headlights. The clerk could not conclusively identify any of the suspects. A fourth

passenger, Charles Wise, and defendant were both wearing tennis shoes, but Wise was not shown to the clerk. Defendant, Daniels, and Bachemin were then taken into custody. A subsequent search of the Horizon revealed the Budget Inn's cash box. No gun was found.

Defendant, Daniels, and Bachemin were charged with first-degree robbery. Their motion to suppress the items seized during the search of the Horizon was overruled. Bachemin then pleaded guilty to conspiracy and agreed to testify for the State. At trial, the defendants were not allowed to question Bachemin about pending robbery charges unrelated to the Budget Inn robbery. 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 now appeals.

Defendant contends his trial counsel was not effective because he did not challenge what defendant calls an impermissibly suggestive show-up.

Established principles govern our review of defendant's Sixth Amendment claim that trial counsel was ineffective. Our ultimate concern is with "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699

(1984). Ineffective assistance is measured by whether "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686. 104 S. Ct. at 2064, 80 L. Ed. 2d at 692-93; *see Schertz v. State*, 380 N.W.2d 404, 408 (Iowa 1985). In examining counsel's conduct, we review de novo the totality of relevant circumstances, *State v. Yaw*, 398 N.W.2d 803, 805 (Iowa 1987), mindful of the presumption that counsel performed competently. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). Defendant bears the burden of proving by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Kraus*, 397 N.W.2d 671, 673 (Iowa 1986). "Reasonableness under prevailing professional norms" is the standard by which we measure counsel's performance. *Strickland*, 446 U.S. at 688, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694.

Defendant can show no prejudice on this issue as the victim did not identify the men as the robbers, only that two men could have been.

Defendant's next 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 African-American men participated in the robbery; (2) there were at least three African-American men in a car about ten blocks from the robbery; (3) the policeman had not seen any other African-American 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 testified for the State is biased. *See State v. Armento*, 256 N.W.2d 228, 299 (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 the weight of the evidence does not support the verdict. We disagree.

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. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

AFFIRMED.